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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION,	Case No.05 CV 01114 JW **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED.R.CIV.P. 56 ON ACACIA'S PATENT INFRINGEMENT CLAIMS AND ON DEFENDANTS' COUNTERCLAIMS FOR PATENT INVALIDITY** DATE: October 20, 2008 TIME: 9:00 am CTRM: Ctrm 8, 4th Floor JUDGE: Hon. James Ware

Dockets.Justia.com

Defendants agree that, on the merits, Acacia is entitled to the relief it seeks in its Motion for Summary Judgment (the "Motion"). The only question raised by defendants' Response is whether the Court should delay issuing the order granting Acacia's admittedly meritorious Motion until such time as it also issues an order on defendants' pending motions for summary judgment that these same claims (already held to be invalid) are invalid for other reasons under Section 112. Defendants only concern is that their summary judgment motions may be delayed "while the Court resolves Acacia's inevitable jurisdictional motion." (Response, at 3:15-17).

The Court should not delay granting Acacia summary judgment that all of the asserted patent claims are invalid based on the Court's prior rulings. A decision on Acacia's Motion will provide the Court with another opportunity (different from its previous opportunity, since defendants now agree with the relief sought by Acacia) to determine whether, at this stage of the proceedings, no actual controversy exists. In this case, as in any federal case, there must be an actual controversy at all stages of the case, and if, at any stage, an actual controversy no longer exists, the court is required to dismiss the action as moot. *See, e.g., Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S. Ct. 2330 (1975); *Allard v. DeLoreon*, 884 F.2d 464, 466 (9th Cir. 1989); *Lusardi v. Xerox Corp.*, 975 F.2d 964, 974 (9th Cir. 1992) ("Neither spirited advocacy, [citation omitted], nor agreement between the parties to allow the federal court to hear the case, [citations omitted], will rescue a mooted action.")

If the Court were to consider defendants motions for summary judgment, after having already made findings which all parties agree render all asserted claims indefinite, and therefore invalid, the Court runs the risk of improperly issuing advisory opinions on defendants' motions for summary judgment, thereby wasting, not saving, judicial resources. *See, Gladwell Governmental Services, Inc. v. County of Marin*, 2005 U.S. Dist. LEXIS 42276, *9 (N.D. Cal. 2005) ("The interests of judicial economy are not served by the adjudication of moot claims, or the issuance of advance rulings on collateral defenses to a litigation that may never be litigated.") All that will be accomplished is that the parties and the Court will be required to deal with a multitude of complicated issues which will be mooted in the end.

Acacia is therefore entitled to the relief it seeks now and the Court should grant Acacia's Motion without any further delay.

DATED: October 6, 2008

Respectfully submitted,

HENNIGAN, BENNETT & DORMAN

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PROOF OF SERVICE

I declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 865 South Figueroa Street, Suite 2900, Los Angeles, California 90017.

On October 6, 2008, I served a copy of the within document described as **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED.R.CIV.P. 56 ON ACACIA'S PATENT INFRINGEMENT CLAIMS AND ON DEFENDANTS' COUNTERCLAIMS FOR PATENT INVALIDITY** on the interested parties in this action by transmitting via the Electronic Case Filing Program of the United States District Court for the Northern District of California, the document listed above by uploading the electronic file for the above listed document on this date. The ECF Program will send an e-notice of the electronic filing to the parties listed on the attached Service List.

I also placed the document listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for Delivery as follows:

Chambers of the Hon. James Ware
Attn: Regarding Acacia Litigation
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3 copies

Executed on October 6, 2008 at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/S/ Cecily Harrison
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